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RE SHERLY MORISTA

HIGH COURT MALAYA, GEORGETOWN
AZIZAN MD ARSHAD J
[SUIT NO: PA-33-129-04-2025]
4 JUNE 2025

B

Abstract – *A marriage that is solemnised outside of Malaysia but subsequently registered in Malaysia, pursuant to s. 31 of the Law Reform (Marriage and Divorce) Act 1976 ('LRA'), is deemed 'as if it was performed in Malaysia'. The registration under s. 31 confers upon the parties a right equivalent to those that would have been granted had the marriage been solemnised within Malaysia. Consequently, where the parties have fulfilled the requirements of the provisions of the LRA, the court is clothed with the jurisdiction to allow an application under s. 107(3) of the LRA to have the divorce decree, issued by the court in Indonesia, to be registered in Malaysia.*

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FAMILY LAW: *Divorce – Jurisdiction – Application under s. 107(3) of Law Reform (Marriage and Divorce) Act 1976 ('LRA') for divorce decree issued by Indonesian court to be registered in Malaysia – Marriage solemnised outside Malaysia – Whether marriage duly registered under s. 31 of LRA – Whether marriage deemed 'as if it was performed in Malaysia' – Whether s. 104 of LRA empowers court to hear application – Whether application properly made – Whether fulfilled requirements of LRA*

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The applicant wife, an Indonesian national, was married to a Malaysian citizen. Their marriage was officially registered in Pekalongan, Indonesia. Upon their return to Malaysia, the parties formalised and registered their marriage in Malaysia in accordance with s. 31 of the Law Reform (Marriage and Divorce) Act 1976 ('LRA'). The marriage subsequently encountered irreconcilable difficulties and ended in divorce. Following the dissolution of the marriage, the applicant and the children returned to Malaysia. In this application, the applicant sought to have the divorce decree, issued by the District Court in Indonesia, to be registered in Malaysia pursuant to s. 107(3) of the LRA. Hence, the application raised an important question concerning the applicability of s. 107(3) of the LRA, specifically as to whether the divorce obtained abroad may be registered in Malaysia.

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Held (allowing application):

(1) Section 31 of the LRA provides that any marriage solemnised outside Malaysia but subsequently registered in Malaysia, shall be deemed 'as if it was performed in Malaysia'. Once a marriage is solemnised outside Malaysia and subsequently registered in accordance with s. 31 of the LRA, the issue of compliance with s. 22 becomes immaterial. Likewise, s. 25, that applies exclusively to ss. 23 and 24, which govern the

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solemnisation of marriages within Malaysia, could not be invoked in relation to marriages that take place abroad and are registered under s. 31 of the LRA. Registration under s. 31 conferred upon the applicant rights equivalent to those that would have been granted had the marriage been solemnised within Malaysia. (paras 19, 22, 23 & 28)

(2) The applicant resided in Malaysia, and the respondent-husband held Malaysian citizenship; therefore, the LRA is applicable. Once a marriage is duly registered under s. 31 of the LRA, s. 104 explicitly empowers the court to consider applications under s. 107(3) of the LRA by recognising a marriage registered under s. 31 as if it was solemnised in accordance with s. 22 of the LRA. Notably, ss. 104 and 107 fall under Part IX: Miscellaneous, which underscore their distinct operation. The applicant had satisfied all the three conditions outlined in s. 104 of the LRA. (paras 30, 31 & 34)

(3) The court adhered to the guidance in the case of *Balakrishnan Kaliappan v. Shameena Nathesan*, *inter alia*, that it was pertinent to refer to: (i) the preamble of the LRA; and (ii) s. 17A of the Interpretation Acts 1948 and 1967 that provides, in the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act shall be preferred to a construction that would not promote that purpose or object. There is no gap if a harmonious approach is embraced and interpreted in its entirety to fulfil the intent of the enactment of the Act. Sections 22, 25, 104 and 107 of the LRA must be interpreted collectively to reveal their true significance, and there is no gap present. They should be understood in a harmonious manner rather than in isolation. (paras 37, 38 & 46)

(4) When there is a special provision related to the application under the LRA, then the Rules of Court 2012 ('ROC') or any other Acts need not be referred to. The maxim '*generalia specialibus non derogant*' applies, *ie*, the specific provision would prevail over the general provision. The ROC are applicable where there is *lacuna* in the LRA or the Divorce and Matrimonial Proceedings Rules 1980. Section 107(3) of the LRA must be read and applied in conjunction with the other relevant provisions of the LRA. In the circumstances, the application under s. 107(3) of the LRA was properly made, fulfilling the requirements of the provisions, and the court had the jurisdiction and authority to grant the application accordingly. (paras 53-55)

Case(s) referred to:

AmGeneral Insurance Bhd v. Sa' Amran Atan & Ors And Other Appeals [2022] 8 CLJ 175 FC ***(refd)***

Balakrishnan Kaliappan v. Shameena Nathesan [2019] 7 CLJ 762 CA ***(foll)***

DP Vijandran v. Majlis Peguam [1996] 1 CLJ 23 CA ***(refd)***

Harta Packaging Industries (Perak) Sdn Bhd lwn. PP [2023] CLJU 474; [2023] 1 LNS 474 HC ***(refd)***

Hat v. Pat [2024] CLJU 2922 HC ***(refd)***
Jason Chan Huan Sen & Ors v. PP [2015] 2 CLJ 605 CA ***(refd)***
Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 3 CLJ 520 CA ***(refd)***
Nancy Kual v. Ho Thau On [1994] 1 CLJ 138 HC ***(refd)***
Nor Hazliza Ismail & Anor v. Mohamed Yusoff Shaik Madar [2024] 4 CLJ 353 CA ***(refd)***
Ong Gim Huat v. Toh Suan Lin Amy [1992] CLJU 40; [1992] 1 LNS 40 HC ***(foll)***
Per: Tan Joo Yen [2016] CLJU 1176; [2016] 1 LNS 1176 HC ***(not foll)***
Perbadanan Pengurusan Sunrise Garden Kondominium v. Sunway City (Penang) Sdn Bhd & Ors And Another Appeal [2023] 2 CLJ 333 FC ***(refd)***
Ramesh Rajaratnam v. SL Sharlini Marnickam [2018] CLJU 1608; [2018] 1 LNS 1608 HC ***(refd)***
Spring Max Capital Sdn Bhd v. Johari Hasan & Ors And Another Case [2020] CLJU 315; [2020] 1 LNS 315 HC ***(refd)***
Tan Kah Fatt & Anor v. Tan Ying [2023] 2 CLJ 169 FC ***(refd)***
Tan Sai Hong v. Joremi Kimin & Anor [1997] 5 CLJ 614 HC ***(refd)***
Tebin Mostapa v. Hulba-Danyal Balia & Anor [2020] 7 CLJ 561 FC ***(refd)***
Teo Chee Cheong v. Chiam Siew Moi [2024] CLJU 2515 CA ***(refd)***
Teo Ka Fook v. Loo Chiat Hui [2011] 1 CLJ 247 HC ***(refd)***
Tuan Hj Zulkifli Hj Hussain & Ors v. IOI Corporation Bhd & Ors [2012] 4 CLJ 401 HC ***(foll)***
Yee Yew Chuin v. Lee Bee Peng [2023] CLJU 2283; [2023] 1 LNS 2283 HC ***(refd)***
Zhu Jiji v. Yeoh Ee Seong & Anor [2023] CLJU 765; [2023] 1 LNS 765 HC ***(refd)***

Legislation referred to:
Interpretation Acts 1948 and 1967, ss. 15, 16, 17A
Law Reform (Marriage and Divorce) Act 1976, ss. 22(3), (4), (5), (6), 23, 24, 25, 31, 104, 107(3)
Rules of Court 2012, O. 67, O. 92

For the applicant - Georgina Tan Weng Kum; M/s CL Teh & Lim

Reported by S Barathi

JUDGMENT
(encl. 1)

Azizan Md Arshad J:

Introduction

[1] The applicant filed encl. 1, dated 11 April 2025, seeking the registration of a foreign divorce pursuant to s. 107(3) of the Law Reform (Marriage and Divorce) Act 1976 (Act 164) ("LRA"). The application was heard and allowed by this Honourable Court on 27 May 2025.

Brief Facts

[2] In this instance, the applicant wife is an Indonesian national who is married to a Malaysian citizen. Their marriage was on 30 July 2012, and was officially registered in Pekalongan, Indonesia.

[3] The marriage subsequently encountered irreconcilable difficulties and ended in divorce. The divorce proceedings were conducted in Pekalongan, Indonesia, and as part of the decree issued by the District Court of Pekalongan, custody of the children was determined and granted accordingly.

[4] Upon their return from Indonesia, the parties formalised and registered their marriage in Malaysia in accordance with s. 31 of the LRA. Following the dissolution of the marriage, the applicant and the children returned to Malaysia. The applicant is presently residing in Penang with her four children, aged between eight and 19 years, comprising two boys and three girls. Her former husband also currently resides in Malaysia.

Proceedings

[5] In this case, the marriage that was solemnised abroad was subsequently registered in Malaysia in accordance with s. 31 of the Law Reform (Marriage and Divorce) Act 1976 (LRA), which provides as follows:

> (1) Where any person who is a citizen of or is domiciled in Malaysia has contracted a marriage abroad, not being a marriage registered under section 26, such person shall:
>
> (a) within six months after the date of such marriage, appear before the nearest or most conveniently available Registrar abroad; and
>
> (b) register such marriage.
>
> (1A) Where before the expiry of six months under paragraph (1)(a), either or both parties return to Malaysia and the marriage was not registered, such person shall:
>
> (a) within six months of arrival in Malaysia, appear before any Registrar; and
>
> (b) register such marriage.
>
> (1B) A person who applies to register a marriage under subsection (1) or (1A) shall:
>
> (a) produce to such Registrar the certificate of such marriage or such evidence either oral or documentary as may satisfy the Registrar that such marriage took place;
>
> (b) furnish such particulars as may be required by the Registrar for the due registration of such marriage; and
>
> (c) apply in the prescribed form for the registration of the marriage to be affected and subscribe the declaration therein.
>
> (2) A Registrar may dispense with the appearance of one of the parties to the marriage if he is satisfied that there exists good and sufficient reason for the absence of such party and in such case the entry in the marriage register shall include a statement of the reason for his or her absence.

A (3) Upon the registration of any marriage under this section, the Registrar shall deliver the triplicate copy of the register to the parties to the marriage and the original to the Registrar General and the duplicate to the Superintendent Registrar who shall cause such copies to be bound together to constitute the Foreign Marriages Register.

B (4) Where the parties to a marriage required to be registered under this section have not appeared before a Registrar within the period as prescribed in subsection (1), the marriage may, upon application to the Registrar, be registered by him on payment of such penalty as may be prescribed.

C **[6]** In the supporting affidavit, the applicant has exhibited the marriage certificate, the certificate of marriage registration pursuant to s. 31 of the LRA, as well as the divorce decree issued by the District Court in Indonesia. Through this application, the applicant seeks to have the foreign divorce decree registered in Malaysia pursuant to s. 107(3) of the LRA.

D **[7]** The applicant acknowledges that the marriage was not solemnised in accordance with the requirements stipulated under s. 22 of the LRA, as referenced in s. 107(3) of the same Act. However, this Honourable Court notes that the said marriage, which took place in Pekalongan, Indonesia, was subsequently registered in Malaysia in compliance with s. 31 of the LRA.

E **Issue**

Is It Possible For The Applicant To Register Their Marriage Under Section 107(3) Of The LRA, Considering That The Marriage Was Not Solemnised In Malaysia?

F **[8]** This application raises an important question concerning the applicability of s. 107(3) of the LRA, specifically as to whether the divorce obtained abroad may be registered in Malaysia. Upon close examination of s. 107(3), it appears that the provision refers to circumstances "where a marriage which is solemnised in Malaysia", thereby raising the issue of whether the applicant's marriage, solemnised in Indonesia, satisfies this requirement.

G **[9]** For ease of reference, s. 107(3) of the LRA provides as follows:

(1) The Registrar General shall maintain a register of divorces and annulments and shall forthwith enter therein the prescribed particulars of
H all decrees of divorce and annulment sent to him, under subsection (2) and of all decrees of divorce and annulment for the registration of which application is made under subsection (3).

(2) Every court which grants a decree of divorce or annulment shall forthwith send one certified true copy of the decree to the Registrar
I General for registration.

(3) Where a marriage which is solemnised in Malaysia is dissolved or annulled by a decree of a court of competent jurisdiction outside Malaysia, either of the parties may apply to the Registrar General for the registration of such decree and the Registrar General, on being satisfied that the decree is one which should be recognised as valid for the purposes of the law of Malaysia, shall register that decree.

(4) Where a decree of divorce or annulment, wherever granted, has dissolved a marriage which was solemnised in Malaysia and which has been registered under this Act or any written law in force immediately before the coming into force of this Act, the Registrar General shall, on registering such decree, cause the entry in the register of marriage relating to that marriage to be marked with the word "Dissolved" and a reference to the proceedings in which that decree was granted.

[10] This issue was similarly addressed in the case of *Per: Tan Joo Yen* [2016] CLJU 1176; [2016] 1 LNS 1176, wherein the court held that the applicant had not solemnised the marriage in accordance with the requirements of s. 22 of the LRA. This was notwithstanding the fact that the applicant's marriage, contracted in Medan, Indonesia, had been registered in Malaysia pursuant to s. 31 of the LRA on 15 August 2012.

The Laws: Analysis And Findings

[11] In *Per: Tan Joo Yen* (*supra*), the court holds the view that it does not fall under the phrase "where a marriage which is solemnised in Malaysia" for the purposes of the provisions of s. 107(3) of the LRA.

[12] The court further finds that the procedure for solemnising a marriage in Malaysia is clearly delineated by Parliament as set out in ss. 22(4), (5), and (6) of the LRA.

[13] Moreover, the court articulated the perspective that the marriage procedure in Malaysia has been instituted by Parliament in accordance with the requirements set forth in ss. 22(4), (5), and (6) of the Act.

[14] The circumstances in the present case bear a close resemblance to the situation in which counsel argues that this court has the jurisdiction to issue an order pursuant to s. 107(3) of the LRA, and has further urged this court to depart from the decision of the High Court in *Per: Tan Joo Yen* (*supra*).

[15] Before this Honourable Court expresses its position on the intention to follow the said case, it is emphasised that this court is neither required nor obligated to adhere to the judgments or rulings of other High Courts. This reflects that the doctrine of binding precedent is not applicable in this context. Nevertheless, this does not preclude the court from exercising its discretion to follow such rulings or decisions of other High Courts where it deems appropriate.

[16] In *AmGeneral Insurance Bhd v. Sa' Amran Atan & Ors And Other Appeals* [2022] 8 CLJ 175; [2022] MLJU 1771, the Federal Court held that:

> [86] As for the two leave questions, we shall deal with leave question 2 first before dealing with leave question 1 as it can be dealt with quite shortly. The answer to question 2 is in the judgment of this court in *Dhalip Bhagwan Singh v. Public Prosecutor* [1997] 4 CLJ 645 where the Peh Swee Chin FCJ delivering the unanimous decision of the court made the following observations:
>
> > The doctrine of *stare decisis* or the rule of judicial precedent dictates that a court other than the highest court is obliged generally to follow the decisions of the courts at a higher or the same level in the court structure subject to certain exceptions affecting especially the Court of Appeal.

[17] In the applications seeking the relevant orders in this matter, the applicant's counsel drew this Honourable Court's attention to ss. 26 and 31 of the LRA. Counsel contended that once the Registrar is satisfied that the marriage certificate issued in Indonesia is authentic and has been duly registered pursuant to s. 31 of the LRA, it follows that the Registrar has also confirmed that all requirements set out in s. 26 have been fully complied with.

[18] Therefore, the learned applicant's counsel argued that the fact that the Registrar had certified and issued a certificate under s. 31 of the LRA showed that s. 25 of the LRA had been complied with by the applicant. This court refers to s. 25 which reads as follows:

> (i) immediately after the solemnisation under section 23 or 24 is performed the **Registrar shall enter the prescribed particulars in the marriage register**;
>
> (ii) such entry shall be attested by the parties to the marriage and by two witnesses other than the Registrar present at the solemnisation of the marriage; and
>
> (iii) such entry **shall then be signed by the Registrar solemnising the marriage**.
>
> (emphasis added)

[19] This Honourable Court, after careful consideration of the relevant provisions, does not concur with the submission of the learned applicant's counsel. This is because s. 25 applies exclusively to ss. 23 and 24, which govern the solemnisation of marriages within Malaysia, and therefore cannot be invoked in relation to marriages that take place abroad and are registered under s. 31 of the LRA. Notably, ss. 23 and 24 fall under Part III: Marriage – Solemnisation of Marriage, whereas s. 31 is situated under Part IV: Registration of Marriages.

[20] Learned counsel for the applicant also cited s. 22(4) of the LRA, which indicates that a marriage solemnised under s. 22 shall be considered void if it is not registered, unless a marriage certificate or a licence has been issued by the Registrar or Chief Minister, or a statutory declaration as per s. 22(3) of the LRA has been submitted to the Registrar or Assistant Registrar, as applicable. Therefore, in this instance, since it was registered and a certificate was issued in accordance with s. 31 of the LRA, the marriage is deemed valid as stipulated in s. 22(4) of the LRA, and a divorce decree may be registered under s. 107(3) of the LRA.

[21] Before proceeding with further remarks on this provision, this Honourable Court reviewed the case of *Per: Tan Joo Yen* (*supra*) and has reached a differing conclusion from that of the court in that matter. In *Per: Tan Joo Yen* (*supra*), the court held that:

> [13] Mahkamah ini berpendapat s. 107(3) Akta itu secara jelas menyatakan "where a marriage which is solemnised in Malaysia ...".
>
> [14] Mahkamah ini telah merujuk peruntukan s. 22(1) Akta itu yang memperuntukkan bagaimana upacara perkahwinan perlu dilakukan. Peruntukan s. 22(1) Akta itu memperuntukkan seperti berikut:
>
> (1) Every marriage under this Act shall be solemnised:
>
> (a) in the office of a Registrar with open doors within the hours of six in the morning and seven in the evening; or
>
> (b) in such place other than in the office of a Registrar at such time as may be authorised by a valid licence issued under subsection 21(3); or
>
> (c) in a church or temple or at any place of marriage in accordance with section 24 at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practise.

[22] This Honourable Court refers to s. 31 of the LRA, which clearly provides that any marriage solemnised outside Malaysia, but subsequently registered in Malaysia, shall be deemed "as if it were performed in Malaysia".

[23] This Honourable Court is of the view that once a marriage is solemnised outside Malaysia and subsequently registered in accordance with s. 31 of the Law Reform (Marriage and Divorce) Act 1976 (LRA), the issue of compliance with s. 22 (which governs marriages solemnised within Malaysia), as discussed in *Per: Tan Joo Yen* (*supra*), becomes immaterial.

[24] In the case of *Per: Tan Joo Yen* (*supra*), this court holds the opinion that there is no mention of s. 104 of the LRA in the aforementioned case. It does not specifically address whether a marriage registered outside Malaysia is governed by the LRA and the laws of Malaysia. In that instance, the court

A referenced the phrase "contracted outside Malaysia" as not encompassing the eligibility to apply under s. 107(3) of the LRA (this matter will be elaborated upon later in this judgment).

Whether There Is A *Lacuna*

B **[25]** In the case of *Per: Tan Joo Yen* (*supra*), the court identified a *lacuna* which it held was not within the court's duty to remedy. The court stated that:

> [15] Mahkamah ini juga berpendapat tatacara perkahwinan di Malaysia telahpun ditentukan oleh Parlimen sebegitu rupa sebagaimana
C diperuntukkan di bawah s. 22(4), (5) dan (6) Akta itu. Bagi kemudahan rujukan diperturunkan peruntukan tersebut sebagaimana berikut:
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> (4) Every marriage purported to be solemnised in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under
D subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be.
>
> (5) Every marriage shall be solemnised in the presence of at least two credible witnesses besides the Registrar.
>
> (6) No marriage shall be solemnised unless the Registrar is satisfied
E that both the parties to the marriage freely consent to the marriage.

[26] Coming back to the case of *Per: Tan Joo Yen* (*supra*), this court is of the view that s. 104 of the LRA was not considered at all. There is no specific reference to the issue of "whether once a marriage outside Malaysia is registered it is subject to the LRA and the Laws of Malaysia".

F **[27]** In that case, the court has referred to the words "contracted outside Malaysia" not including the eligibility to apply under s. 107(3) of the LRA because it is not "a marriage solemnised in Malaysia" under s. 22 of the LRA.

G **[28]** Nevertheless, this Honourable Court holds that once the marriage is registered pursuant to s. 31 of the LRA, any issues relating to s. 22 of the LRA become irrelevant. This is because registration under s. 31 confers upon the applicant rights equivalent to those that would have been granted had the marriage been solemnised within Malaysia.

H **[29]** This becomes evident when discussing the case of *Tan Sai Hong v. Joremi Kimin & Anor* [1997] 5 CLJ 614, in which the court determined that:

> Section 104 of the Law Reform (Marriage and Divorce) Act 1976 enacts, *inter alia*, *that a marriage contracted outside Malaysia shall be recognised as valid if it was contracted in a form required or permitted by the law of the country where*
I *it was contracted. Factually, it was not disputed that both the plaintiff and the deceased were Malaysian citizens and this meant that the Law Reform (Marriage and Divorce) Act 1976 applies to them equally … .*
>
> (emphasis added)

[30] In the present situation, it is indisputable that the applicant resides in Malaysia, and the respondent husband holds Malaysian citizenship; therefore, the LRA is applicable. In the case of *Nancy Kual v. Ho Thau On* [1994] 1 CLJ 138, the court held that:

> The present marriage has to be recognised as valid as it is consistent with the provisions of section 104 of the Act. *The section in effect recognises a marriage contracted outside Malaysia if such marriage was "contracted in a form required or permitted by the law of the country where it was contracted".*
>
> (emphasis added)

[31] Consequently, once a marriage is duly registered under s. 31 of the LRA as is the case herein, s. 104 of the LRA becomes applicable. Section 104 explicitly empowers this Honourable Court to consider applications made under s. 107(3) of the LRA by recognising a marriage registered under s. 31 as if it were solemnised in accordance with s. 22 of the LRA. Notably, ss. 104 and 107 fall under Part IX: Miscellaneous, underscoring their distinct operation, as affirmed in the case of *Nor Hazliza Ismail & Anor v. Mohamed Yusoff Shaik Madar* [2024] 4 CLJ 353.

[32] Nevertheless, this court concurs with the ruling in the case of *Per: Tan Joo Yen* (*supra*) in instances where no registration occurs under s. 31 of the LRA. This is due to the fact that a marriage performed outside of Malaysia, which is not registered in Malaysia, does not empower the Malaysian court to recognise and register a divorce obtained outside of Malaysia, as it is deemed "not solemnised in Malaysia" according to s. 22 of the LRA, nor contracted under ss. 31 and 104 of the LRA, which would allow the parties to seek the registration of a divorce decree in Malaysia under s. 107(3) of the LRA.

[33] Section 104 of the LRA articulates that:

> *A marriage contracted outside Malaysia* other than a marriage solemnised in a Malaysian Embassy, High Commission or Consulate under section 26, *shall be recognised as valid for all purposes of the law of Malaysia if*:
>
> (a) it was *contracted in a form required or permitted by the law of the country where it was contracted*;
>
> (b) each of the parties had, at the time of the marriage, *capacity to marry under the law of the country of his or her domicile*; and
>
> (c) *where either of the parties is a citizen of or is domiciled in Malaysia, both parties had capacity to marry according to this Act*.
>
> (emphasis added)

[34] According to s. 104 of the LRA, a marriage that is entered into outside of Malaysia shall be considered valid, and in this instance, the applicant has satisfied all three conditions outlined in s. 104 of the LRA. In *Teo Ka Fook v. Loo Chiat Hui* [2011] 1 CLJ 247; [2010] MLJU 0636, held that:

A [16] Recognition of a foreign judgment is part of the larger doctrine of comity of nations. It has been said in *Anthinarayana Mudaliar v. Ajit Singh* [1953] 1 LNS 2 that such a judgment or decree will be treated and acted upon by the Malaysian courts as final, notwithstanding any irregularity of procedure and the local law so long as the foreign court had jurisdiction over the subject matter and the person brought before it and the
B proceedings do not offend against natural justice. Despite the passage of time, this principle to my knowledge, is applicable even today.

[35] In *Hat v. Pat* [2024] CLJU 2922; [2024] MLJU 3425, the court held that:

C [82] **In my view, the purpose of section 107 of the Law Reform (Marriage and Divorce) Act** is not to facilitate the enforcement of an order from a foreign court but **is limited solely to the registration of a decree of divorce for the purpose of maintaining a record of the parties' marital status**. (emphasis added)

D **[36]** Consequently, this court cannot concur with the determination made in the case of *Per: Tan Joo Yen* (*supra*) when the court stated that:

[22] Mahkamah ini berpendapat pemohon tidak boleh bergantung kepada peruntukan s. 107(3) Akta itu bagi memohon deklarasi agar perceraiannya di Medan didaftarkan oleh Pendaftar Besar. Mahkamah ini sedar berlaku lacuna dalam Akta itu bagi menggarap senario yang dialami oleh
E pemohon. Parlimen membenarkan perkahwinan di luar Malaysia didaftarkan di bawah s. 31 Akta itu. Sebaliknya Parlimen tidak menggubal peruntukan bagi perkahwinan di luar Malaysia untuk didaftarkan perceraiannya mengikut Akta itu.

...

F [24] Mahkamah ini sedar pemohon memfailkan saman pemula bagi mendapatkan perintah agar Pendaftar Besar mendaftarkan perceraiannya di Medan bergantung kepada peruntukan s. 107(3) Akta itu. Mahkamah ini mengambil pendekatan yang sama dengan prinsip yang diputuskan dalam kes *Robert Lee & Anor* (*supra*), Parlimen hanya membenarkan
G peruntukan s. 107(3) Akta itu untuk upacara perkahwinan yang diadakan di Malaysia dan bukannya perkahwinan di luar Malaysia tetapi didaftarkan mengikut peruntukan s. 31 Akta itu.

[25] Mahkamah ini berpendapat terpulang kepada Parlimen selaku penggubal undang-undang untuk meminda peruntukan s. 107 (3) Akta itu bagi mengisi lacuna undang-undang yang sedang diperdebatkan ini.

H **[37]** This court, in interpreting the provision, adheres to the guidance given in the case *Balakrishnan Kaliappan v. Shameena Nathesan* [2019] 7 CLJ 762; [2019] 5 MLJ 661:

In this regard, it is pertinent to refer firstly, to the preamble of LRA which
I states:

> An Act to provide for monogamous marriages and the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce; **and to provide for matters incidental thereto**.

Secondly, to s. 17A of the Interpretation Acts 1948 and 1967 which provides as follows:

> **Section 17A Regard to be had to the purpose of the Act**
>
> In the interpretation of a provision of an Act, **a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred** to a construction that would not promote that purpose or object.
>
> (emphasis added)

[38] The court determined that in these instances, ss. 22, 25, 104, and 107 of the LRA must be interpreted collectively to reveal their true significance, and there is no gap present. They should be understood in a harmonious manner rather than in isolation. In *Perbadanan Pengurusan Sunrise Garden Kondominium v. Sunway City (Penang) Sdn Bhd & Ors And Another Appeal* [2023] 2 CLJ 333; [2023] 2 MLJ 621, the Federal Court held that:

> [140] At the outset it is worth briefly setting out the general principles on the interpretation of statutory provisions. *It is a cardinal rule of statutory interpretation that provisions must be read as a whole and that they must be read to give effect to legislative intent, including the object and purpose of the Act*. This is further underscored by s. 17A of the Interpretation Acts 1948 and 1967.
>
> (emphasis added)

[39] In *Tan Kah Fatt & Anor v. Tan Ying* [2023] 2 CLJ 169; [2023] 1 LNS 61, the Federal Court held that:

> [51] It is clear from the wording of s. 17A that any reading which is purely textual, as opposed to contextual, is to be rejected.

[40] In *Jason Chan Huan Sen & Ors v. PP* [2015] 2 CLJ 605; [2015] 1 MLJ 701, the COA held that:

> All the provisions in the Act should be considered by having due regard to the other provisions housed in the same statute, **and should be interpreted harmoniously so as to maintain the integrity of its framework, by giving effect to what Parliament had intended** to provide for in the various regimes created within the Act.
>
> (emphasis added)

[41] In *Ramesh Rajaratnam v. SL Sharlini Marnickam* [2018] CLJU 1608; [2018] 1 LNS 1608; [2018] MLJU 1454, held that:

> [92] *Malaysia is not a contracting party to the Hague Convention on the Recognition of Divorces and Legal Separations which was concluded on 1.6.1970 with the objective of facilitating the recognition of divorces and legal separations obtained in the respective territories*. The said Convention entered into force on 24.8.1975

A and Article 1 provides that it shall apply to the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State which follow judicial or other proceedings officially recognised in that State and which are legally effective there. *In the Malaysian context, apart from the provision of subsection 107(3) LRA 1976 as quoted earlier, the recognition rules are not spelt out. Thus, the Malaysian courts would have to decide in each case whether to recognise a foreign decree of divorce or otherwise.*

B

(emphasis added)

[42] This Honourable Court also takes into account the structure and placement of the relevant provisions within the Act. In this regard, the C pertinent sections begin with ss. 22, 31, 104, and 107 of the LRA. When these sections are interpreted harmoniously and comprehensively, rather than in isolation, the overarching objective of the Act – as articulated in its Preamble – will be duly fulfilled, which is to:

D An Act to provide for monogamous marriages and **the solemnisation and registration of such marriages**; to amend and consolidate the law relating to **divorce**; and to provide for matters incidental thereto.

(emphasis added)

[43] The importance of this preamble has been stated in s. 15 of the Interpretation Acts 1948 and 1967 which provides as follows:

E

Long title, preamble and schedules

15. The long title and preamble and every schedule (together with any note or table annexed to the schedules) to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation.

F

[44] In the case of *Harta Packaging Industries (Perak) Sdn Bhd lwn. PP* [2023] CLJU 474; [2023] 1 LNS 474; [2023] 10 MLJ 722, it was held as follows:

Tetapi, perkara mengenai susunan bahagian dan seksyen dalam sesuatu G *perundangan mungkin adalah perkara yang remeh bagi sesetengah pihak namun ia mempunyai maksud dan tujuan tertentu dalam penggubalan undang-undang*. Sehubungan itu, saya merujuk kepada s. 16 Akta Tafsiran 1948 dan 1967 (Akta 388) yang memperuntukkan bahawa:

Notice to be taken of division into parts, chapters, *etc*.

H *16. Where an Act or subsidiary legislation is divided into parts or chapters or otherwise*, the fact and particulars of the division shall, without express mention thereof in the Act or subsidiary legislation, *be taken notice of in all courts and for all purposes whatsoever*.

(emphasis added)

I

Section 16 of the Interpretation Acts has been applied in *Spring Max Capital Sdn Bhd v. Johari Hasan & Ors And Another Case* [2020] CLJU 315; [2020] 1 LNS 315; [2021] 2 MLRH 449.

[45] This court is obligated to adhere to the ruling in the case of *Tuan Hj Zulkifli Hj Hussain & Ors v. IOI Corporation Bhd & Ors* [2012] 4 CLJ 401; [2011] MLJU 665, in which the High Court determined that "the court is prohibited from interpreting a document to include deeming provisions in cases of *lacunae*".

[46] Nevertheless, in this instance, there is no gap if a harmonious approach is embraced and interpreted in its entirety to fulfil the intent of the enactment of this Act. Malaysian law mandates that the interpretation of an Act be conducted with the purpose and objective of the Act considered; a construction that advances the purpose or objective inherent in the Act (regardless of whether that purpose or objective is explicitly articulated in the Act) shall be favoured over a construction that does not support that purpose or objective. In my opinion, embracing a purposive approach would enhance the objective of the LRA and should take precedence over a literal interpretation (refer to s. 17A of the Interpretation Acts 1948 and 1967 and please see *Tebin Mostapa v. Hulba-Danyal Balia & Anor* [2020] 7 CLJ 561).

[47] In *Teo Chee Cheong v. Chiam Siew Moi* [2024] CLJU 2515; [2024] MLJU 2936, Court of Appeal has held that:

> [44] By virtue of s. 2(1)(a) IA, Part I IA applies to LRA. This is because LRA was enacted after 18.5.1967. Section 40(1) IA is in Part I IA and provides as follows:
>
> s. 40 Implied powers
>
> (1) Where a written law confers a power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

Miscellaneous Application: Care, Control And Custody

[48] In the application, the applicant sought to secure custody of all the children. However, the High Court refused to grant any care, control, and custody order on the basis of a specific provision under s. 107(3) of the LRA, which prohibits such relief in this context. It is imperative that applicants do not conflate applications for child custody with those for divorce registration, as doing so amounts to an abuse of the judicial process and misuse of the court's authority.

[49] It is crucial for both parties to register a divorce under the LRA. Failure to do so will result in their names remaining in the registration book, which will hinder their ability to remarry in Malaysia (unless a decree of

divorce or annulment is registered under s. 107 of the LRA). This is due to the prohibition of polygamous marriages under the LRA. The following two sections illustrate this point:

(i) Registration

Section 27

The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act.

The entries in this registration book are important as per the section of interest to the LRA.

(ii) Proof

Section 46

Every marriage register kept under this Act and any copy of such entry certified by the Registrar shall be prima facie evidence of the dates and acts contained in such marriage register.

[50] In the matter of *Per: Tan Joo Yen* (*supra*), the court also examined and addressed the applicability of O. 67 of the Rules of Court 2012 (ROC). The court concluded that:

[30] Mahkamah ini telah melihat huraian yang dinyatakan dalam saman pemula iaitu A. 67 KKM. Peguam pemohon yang terpelajar dalam penghujahannya tidak bergantung kepada A. 67 KKM ini.

[31] A.67 KKM berkaitan pengkuatkuasaan penghakiman bersaling mengikut Akta Penguatkuasaan Penghakiman Bersaling 1958 [Akta 1958]. Mahkamah ini berpendapat peguam pemohon yang terpelajar bertindak secara betulnya apabila tidak meneruskan permohonannya berdasarkan A. 67 KKM kerana tiada penghakiman di luar negara yang terlibat. Perceraian pemohon bukannya diputuskan oleh Mahkamah di Medan sebaliknya di Pejabat Sipil.

[32] Mahkamah ini merujuk A. 67 k. 2 KKM di mana menyatakan pemakaian peruntukan ini kepada penghakiman yang diperolehi daripada Mahkamah Atasan negara yang dinyatakan dalam Jadual Pertama, Akta 1958. Bagi kemudahan rujukan diperturunkan peruntukan A. 67 k. 2 KKM yang berbunyi seperti berikut:

2. Permohonan untuk pendaftaran (A. 67 k. 2)

Suatu permohonan di bawah seksyen 4 Akta berkenaan dengan suatu penghakiman yang diperoleh di suatu Mahkamah atasan negara dalam Jadual Pertama supaya penghakiman itu didaftarkan di Mahkamah Tinggi hendaklah dibuat melalui suatu saman pemula.

[33] Mahkamah ini berpendapat dalam permohonan pemohon ia tidak melibatkan apa-apa penghakiman Mahkamah Atasan yang dinyatakan dalam Jadual Pertama, Akta 1958. Perceraian pemohon dilakukan bukannya di Mahkamah Atasan bagi maksud A. 67 k. 2 KKM itu.

[51] This Honourable Court concurs with the aforementioned position based on the facts of the present case and agrees with the findings in that precedent. However, this court also wishes to express its views concerning the application of the Rules of Court, particularly O. 67 and O. 92, in proceedings under the Law Reform (Marriage and Divorce) Act 1976 (LRA).

[52] This court is of the opinion that when there is a special provision related to the application under the LRA, then the ROC 2012 or any other Acts need not be referred to. The maxim "*generalia specialibus non derogant*" applies as held by the Court of Appeal in *DP Vijandran v. Majlis Peguam* [1996] 1 CLJ 23; [1995] 3 MLJ 576; [1996] 1 AMR 129 and *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 3 CLJ 520; [1995] 1 MLJ 719; [1995] 2 AMR 969, the specific provision would prevail over the general provision.

[53] In *Ong Gim Huat v. Toh Suan Lin Amy* [1992] CLJU 40; [1992] 1 LNS 40; [1992] 2 MLJ 610, the court held the view that the Rules of the High Court 1980 (now the Rules of Court 2012) are applicable where there is a *lacuna* in the Law Reform (Marriage and Divorce) Act 1976 (LRA) or the Divorce and Matrimonial Proceedings Rules 1980 (DMPR 1980). This Honourable Court does not dispute the reasoning in that case and hereby fully adopts the principle established therein, as affirmed in *Zhu Jiji v. Yeoh Ee Seong & Anor* [2023] CLJU 765; [2023] 1 LNS 765; [2023] MLJU 921 and *Yee Yew Chuin v. Lee Bee Peng* [2023] CLJU 2283; [2023] 1 LNS 2283; [2023] MLJU 2535.

Conclusion

[54] For the reasons above-mentioned, to avoid any misinterpretation, s. 107(3) of the LRA must be read and applied in conjunction with the other relevant provisions of the LRA as outlined in this judgment.

[55] Ultimately, this Honourable Court declined to follow the decision in *Per: Tan Joo Yen* (*supra*) concerning the specific rulings on s. 107(3) of the LRA. Having considered the facts and circumstances of the present case, the court finds that the application under s. 107(3) of the LRA (encl. 1) is properly made, fulfilling the requirements of the relevant provisions, and that this court has the jurisdiction and authority to grant the application accordingly.